

Exhibit A

SCOPE OF SERVICES

1. Scope of Services.

- (a) The Service Provider agrees to provide to the State child support collection and disbursement services for the California Child Support Automation System as described in this Service Agreement and more fully described in certain sections of the State Disbursement Unit Request for Proposal No. RFP-FTB- 1730-172 (the "RFP") and the final proposal, marked "Master Copy", submitted by the Service Provider in accordance with the provisions of Section 8.4 of the RFP (the "Final Proposal"). The following Sections of the RFP are incorporated into this Service Agreement by reference: Sections, 4.0, 6.0, 7.0, SDU RFP Glossary Terms and Definitions and SDU RFP Acronyms. The Service Provider's Final Proposal is incorporated into this Service Agreement by reference.

2. Location. The services shall be performed at the location and as set forth below:

- (a) The Service Provider shall provide the State and SDU staff convenient access to the ~~SDU facility~~ all SDU facilities. To facilitate oversight and review of implementation processes, the service provider shall locate a single site facility to house implementation and operational activities within twenty-five (25) miles of the California State Capitol Building located in Sacramento, CA and a reasonable distance from the mutually agreed upon SDU bank. The SDU facility and network equipment shall be physically isolated from other operations and services provided by the Service Provider to other customers. The single site facility requirement shall not apply: 1) to the data center facility; 2), backup facility; 3) printing services; 4) directly related banking, EFT/EDI, EPC and direct deposit functions; and 5) the offsite customer service overflow location. The Service Provider shall provide any and all required connectivity for any functions and services outside the primary site facility.
- (b) The Service Provider shall provide access to the SDU facility and participate in conducting tours or visits at the State's request. The Service Provider shall furnish the State with five (5) onsite workstations including network access, telephone, and CCSAS standard desktop capabilities. The Service Provider shall configure one of the office configurations with a hardwalled office with a lockable door, permanently furnished for use by the State's Oversight Manager, as needed. The Service Provider shall provide suitable office space, materials, and tools for the purpose of meeting and facilitating State audits.

3. Designated Points of Contact.

- (a) The Franchise Tax Board (FTB) is the agent for DCSS responsible for the procurement, development, implementation, and maintenance of the single statewide automation system in accordance with the State's child support plan

and will be the primary point of contact between the State and the Service Provider during such implementation. During such implementation, the Points of Contact for the Service Provider and the State shall be:

Implementation

State Agency: Franchise Tax Board	Service Provider: Bank of America
Name: David Maxwell-Jolly	Name: Alice Burnett
Address: P.O. Box 1907 Rancho Cordova CA 95741-1907	Address: GA1-006-07-20 Atlanta, Georgia 30308-2214
Phone: (916) 845-3500	Phone: (404) 607-5251
Fax: (916) 845-0247	Fax: (404) 607-6371

- (b) The Department of Child Support Services (DCSS) is the single State agency designated to operate the child support program under Title IV-D of the Social Security Act (42 U.S.C. § 651 et seq.). Upon the completion of the implementation and commencement of SDU operations, DCSS will assume primary oversight responsibility for SDU services provided by the Service Provider and will be the primary point of contact between the State and the Service Provider. During such operations, the Points of Contact for the Service Provider and the State shall be:

Operations

State Agency: Department of Child Support Services	Service Provider: Bank of America
Section/Unit: Fiscal Accounting Office	Section/Unit:
Attention: Dianne Koelzer	Attention: Laura Secondo
Address: P.O. Box 419064 Rancho Cordova CA 95741-9064	Address: 10850 White Rock Road, CA3-701-01-23 Rancho Cordova, CA 95670
Phone: (916) 464-2777	Phone: (512) 585-9792
Fax: (916) 464-5335	Fax: (404) 607-6371

4. Service Provider's Banking Responsibilities.

- (a) The Service Provider agrees to and shall be acting pursuant to provisions of California Family Code §17311, §17311.5 and §17311.7. The bill authorizes DCSS to enter into a trust agreement with a trustee or fiscal intermediary to receive or disburse child support collections and further provide that any trust accounts created by trust agreements may be held outside the State Treasurer.

5. State Responsibilities

- (a) The State will:

- (i) ensure sufficient funds are provided to the Service Provider to enable the Service Provider to timely perform its documented disbursement obligations.
- (ii) be responsible for developing, publishing, and monitoring child support business policies, processes, and procedures as are reasonably necessary for SDU implementation.
- (iii) cooperate with and exercise reasonable efforts to provide access to resources, information and data as are reasonably necessary for the Service Provider to meet its contractual obligations.
- (iv) provide access to appropriate existing functional and technical documentation as reasonably requested.
- (v) to the extent reasonably feasible, direct, manage and coordinate the participation of external entities, including Federal agencies, other State of California agencies, and county agencies.
- (vi) provide to the Service Provider a list of contact names, phone numbers, and fax numbers for the Service Provider to report operational problems and status.
- (vii) implement and manage WAN infrastructure and access. Except for the SP's backup facility, the State will provide for the administration, maintenance and repair of circuits and routers so installed to connect the SDU site.
- (viii) facilitate resolution of issues related to CSE integration activities.
- (ix) provide the Service Provider access to the CCSAS Schedule Management Plan and access to the process to enable the Service Provider participation pursuant to SOW IM 2.15. However, the Service Provider will, at its expense, provide the license(s) to any software programs necessary for access to or participation therein of the CCSAS Schedule Management Plan and Process.
- (x) provide the Service Provider access to the CCSAS Issue Management Plan and access to the process to enable Service Provider participation pursuant to SOW IM 2.8. However, the Service Provider will, at its expense, provide the license(s) to any software programs necessary for access to or participation therein of the CCSAS Issue Management Plan and process.
- (xi) provide the Service Provider access to the CCSAS Risk Management Plan and access to the process to enable Service Provider participation pursuant to SOW IM 2.10. However, the Service Provider will, at its expense, provide the license(s) to any software programs necessary for

access to or participation therein of the CCSAS Risk Management Plan and Process.

- (xii) provide the Service Provider access to CCSAS Scope Management and Change Request Management Plan and to the process to enable the Service Provider participation pursuant to SOW 6.10. However, the Service Provider will, at its expense, provide the license(s) to any software programs necessary for access to or participation therein of the CCSAS Scope Management and Change Request Management Plan and Process.
 - (xiii) shall provide names of employers that are under the mandatory FTB and/or EDD EFT/EDI requirements.
 - (xiv) provide, to the extent feasible, the compiled list from the LCSAs containing the names of child support payors who have submitted checks with non-sufficient funds, and from whom checks are not to be accepted for payment of child support obligations.
 - (xv) shall furnish the Service Provider with up to three (3) onsite workstations including network access, telephone, and CCSAS standard desktop capabilities for the initial 12 months of the contract.
- (b) Promptly after the Service Provider has knowledge of any failure of the State to perform any State obligation as set forth in this Section, the Service Provider shall give written notice to the State, specifying in reasonable detail the nature of the failure. The State will have a reasonable period of time (in addition to any period described in Section 23 of Exhibit C (Termination for Default), within which to remedy any such failure. The failure of the State to perform its obligations as described in this Section shall not relieve the Service Provider of any obligations under this Service Agreement, except to the extent that such State failure is materially prejudicial to the Service Provider's ability to perform its interdependent obligations, and then only to the extent so prejudiced. The Service Provider shall be entitled to an extension for State delay, as more particularly described in Section 5(d) of Exhibit D (Special Terms and Conditions).
- (c) To the extent State responsibilities concern the audit of claims to fund child support payments and child support payments funded by claims or access to data and information necessary to verify the accuracy of or authority to process claims and disbursements, the State shall mean DCSS, FTB and shall also include the State Controller's Office in discharging its constitutional responsibilities.

6. Readiness Review Completed

The Service Provider must have completed all testing and performed all services required to be performed and delivered all deliverables required to be delivered such that the State shall have accepted the SDU Readiness Review (SOW IM 3.30) on or before the date on which the CSE Version 1 Operational Readiness Assessment Review is scheduled for approval as set forth in the approved CSE Project Schedule.

7. Term and End of Service Agreement Turnover Requirements.

- (a) The term of this Agreement is five (5) years, unless sooner terminated in accordance with the provisions of Sections 21, 22, and 23 of Exhibit C (Form GSPD-401IT General Provisions – Information Technology) and Sections 3 and 4 (state and federal Budget Contingency Clauses) of this Exhibit B. The State shall have the right to extend the term as described in subparagraphs (b) and (d).
- (b) The State, at its sole discretion, may extend the term of this Agreement for two (2) additional terms of one (1) year each on all the same terms and conditions set forth in this Service Agreement, by providing written notice of election to extend to Service Provider not less than thirty (30) days prior to the expiration of the then-current term.
- (c) The Service Provider shall turn over to the State the child support collection and disbursement responsibilities (the “Turnover”) at the end of the then-current term of this Service Agreement, in accordance with the requirements of SOW IM 4.0, Turnover Management, and associated CDL Items.
- (d) Notwithstanding the exercise or lack of exercise of an extension option, a separate extension may be exercised, solely for the purpose of completing the turnover pursuant to the Turnover Plan (CDL IM 010). The term of such separate extension shall be at the discretion of the State, for a period no longer than is necessary to effect complete turnover, and in no event longer than six (6) months. The State shall provide notice of such separate extension not less than thirty (30) days prior to the expiration of the then current term.

8. Offsets

- (a) The State shall offset reimbursement of daily Service Provider disbursements for stale dated disbursement checks. A check is considered stale dated six months after issuance.
- (b) The SP is responsible for losses that result from its acts or omission of acts. The SP agrees that all performance standards in this RFP and nonperformance sanctions are reasonable. The SP agrees that the State shall have the right to recover losses including administrative cost that it incurs as a result of the SP's act or omissions. The State shall have the right to recover said losses through offsetting the SP's monthly invoice, in the amount equal to the losses incurred, or by direct billing to the SP.

9. Schedule (added per CR-3-00008-01)

The SDU shall change the SDU Management Milestone dates, the SDU CDL delivery dates and the commencement date for each county rolled onto the SDU in its schedule only by obtaining a Change Order through the Change Management Process.

Exhibit B**BUDGET DETAIL AND PAYMENT PROVISIONS****10. Compensation.**

- (a) For services satisfactorily rendered, and upon receipt and approval of the invoices therefor, State shall pay Service Provider compensation based upon business services (collections and disbursements) delivered and performance (transactions) successfully completed, as more particularly described in this Service Agreement. The total amount of this Service Agreement is dependent upon the total transactions, and related compensable costs as set forth in sub-section (b) herein, however, the total amount of this Service Agreement cannot exceed \$200,381,758. The amounts shown below cannot be exceeded for each fiscal year covered by this Service Agreement:

SFY 04/05	\$	0
SFY 05/06	\$	21,669,945
SFY 06/07	\$	50,097,884
SFY 07/08	\$	33,228,459
SFY 08/09	\$	32,633,198
SFY 09/10	\$	31,768,128
SFY 10/11	\$	30,984,144
Totals		\$200,381,758

In the event the total transactions and related compensable costs exceed the amount encumbered, the State may at its sole discretion; seek appropriation of additional funds. Such additional encumbrance shall require an amendment to this Service Agreement.

- (b) The State shall pay the Service Provider in accordance with the compensation approach described in Section 7 Compensation Rate Schedule, Section 7 Balance Scorecard and Section 7 Invoicing and Payment of this RFP at the rates described by the Service Provider in the Compensation Rate Schedule in the Final Proposal Division 5 – Financial Response, completed in accordance with the requirements of Section 8.6.1.2 of the RFP. The State shall also pay the Service Provider \$.485 for each Family Violence Indicator Request Form package mailed to a requesting participant.

- (i) “Baseline Compensation” consisting of the collection and disbursement compensation which together make up the baseline compensation component. In no event will the State be required to pay Baseline Compensation greater than the maximum amount available for payment in a month, not including permitted reimbursements;
- (ii) “Other Compensation” consisting of compensation for a number of other services compensated for on a transaction basis or as otherwise agreed-upon by the parties in this Service Agreement.
- (iii) Rates payable to the Service Provider “per transaction” may vary based on volume variances for a given transaction as described in Section 7.
- (iv) All compensation payable to the Service Provider is subject to adjustment based upon the Service Level Objective (SLO) more particularly described in Section 6 Statements of Work (Collections and Disbursements) and Section 7. The State shall offset the rate per transaction when performance is not met by the Service Provider for the given SLO.
- (v) All compensation payable to the Service Provider is subject to further adjustment based upon the Balance Scorecard (BSC) assessment, which assessment shall be performed by the State in accordance with the provisions of Section 7 of the RFP. If the State determines that the performance category was unsatisfactory during the applicable quarter, a weight (more particularly described in Section 7) will be applied against the Base Compensation for the third month of the quarter and multiplied by the Adjustment percentage for each category (more particularly described in Section 7), with a maximum of 5%. Each of the four categories is equally weighed with a weight of 1.25%. The result of the total Adjustment percentages for each category is then multiplied by that month’s Baseline Compensation amount to reflect the total Balanced Scorecard Card Adjustment.
- (vi) Service Provider shall be entitled to reimbursement of certain expenses, as more particularly described in Section 7.

11. Invoicing and Payment.

- (a) Service Provider shall submit invoices to the State meeting the requirements of Section 7 of the RFP and in particular calculated as required by Section 7 of the RFP, Service.
 - (i) Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract or Service Agreement number; release order number (if applicable); item number; unit price, extended item price and invoice total

amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

- (ii) For contracts in excess of \$50,000, in accordance with GC Section 16645 et seq., every invoice shall include a certification that the Service Provider shall not use State funds to assist, promote, or deter union organizing during the life of the contract, including any extensions or renewals thereof.

- (b) All invoices shall be submitted to:

Department of Child Support Services
Fiscal Accounting Office
Attn: Deputy Director Administrative Services Division
P.O. Box 1907
Rancho Cordova, CA 95741-9064

12. Budget Contingency Clause.

- (a) Notwithstanding Section 21 of Exhibit C to this Service Agreement, it is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Service Provider or to furnish any other considerations under this Agreement and Service Provider shall not be obligated to perform any provisions of this Agreement.
- (b) If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Service Provider to reflect the reduced amount.

13. Federal Funding Provisions.

- (a) This Service Agreement is valid subject to availability of funds approved by the federal Administration for Children and Families. If this Service Agreement overlaps federal fiscal years, the State's monetary obligation under this Service Agreement in subsequent fiscal years is subject to and contingent upon availability of federal funds budgeted for the purpose of this Service Agreement.
- (b) It is mutually understood between the parties that this Service Agreement has been written for the mutual benefit of both parties, before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the Service Agreement were executed after that determination was made.
- (c) This Service Agreement is valid and enforceable only if sufficient funds are made available to the State by the U.S. Department of Health and Human Services for

the purpose of this program for the fiscal year(s) covered by the term of this Service Agreement. In addition, this Service Agreement is subject to any additional restriction, limitation, or condition imposed by a federal agency or enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Service Agreement in any manner.

- (d) The parties mutually agree that if a federal agency or the Congress does not appropriate sufficient funds for the program, the State shall have the option to terminate the Service Agreement pursuant to the terms of paragraph 21 of Exhibit C, Termination for Nonappropriation of Funds or amend the Service Agreement to reflect any reduction in funds.

14. Prompt Payment Clause.

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services for which payment is due; or (ii) receipt of an undisputed invoice, whichever is later.

15. Maintenance of Records.

The Service Provider shall maintain records that support invoices submitted to the State for payment. The Service Provider shall preserve invoice records for a period of four (4) years and 4 months from the submission of the final invoice or date of contract termination or close of audit, whichever is longer. These records shall be made available to the State. 45 C.F.R. section 92.36

Exhibit C

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Proposal Attachment 3B

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Exhibit 8M

GENERAL PROVISIONS – INFORMATION TECHNOLOGY

1. **DEFINITIONS:** The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.
 - a) **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
 - b) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
 - c) **"Attachment"** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.
 - d) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - e) **"Buyer"** means the State's authorized contracting official.
 - f) **"Commercial Software"** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
 - g) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
 - h) **"Custom Software"** means Software that does not meet the definition of Commercial Software.
 - i) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
 - j) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
 - k) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.
 - l) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
 - m) **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
 - n) **"Documentation"** means nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.
 - o) **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).
 - p) **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
 - q) **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
 - r) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
 - s) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
 - t) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
 - u) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
 - v) **"Machine"** means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
 - w) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
 - x) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
 - y) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
 - z) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
 - aa) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
 - bb) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
 - cc) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.

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GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- dd) **"Performance Testing Period"** means a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) **"Site License"** means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.
- ll) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- mm) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- nn) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- oo) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- pp) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
2. **CONTRACT FORMATION:**
- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
- b) If this Contract results from a solicitation other than described in paragraph a), above, Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
- c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) If this Contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- c) To the extent that this contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.
8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
9. **ASSIGNMENT:** This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.
10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by

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the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

- 11. ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a) these General Provisions – Information Technology, except:
 - (i) Sections 12 (Packing and Shipment), 13 (Transportation Costs and Other Fees or Expenses), 15 (Substitutions), 17 (Samples), 29 (Invoices), and 32 (Newly Manufactured Goods) are not applicable to this Contract and are deleted in their entirety;
 - (ii) The provisions of Section 6 of Exhibit D supercede any inconsistent terms set forth in Section 16 (Inspection, Acceptance and Rejection) herein;
 - (iii) The remedies set forth in Section 5 of Exhibit D are cumulative of the remedies set forth in Section 26 Limitation of Liability;
 - (iv) The Glossary Terms and Definitions and Acronyms set forth in the State Disbursement Unit Request for Proposal supercede any definitions of similar terms set forth herein;
 - (v) The following terms as used anywhere in this Contract or its exhibits are interchangeable as follows:
 - (A) The terms "Service Agreement", "Agreement", and "Contract" mean this contract or agreement by whatever name known or in whatever format used. These terms are used interchangeably throughout this Contract, the RFP, and the Final Proposal.
 - (B) The term "Service Provider" means the business entity with whom the State enters into this Contract. Service Provider shall be synonymous with "contractor," "supplier," "vendor" or other similar term.
- b) Standard Agreement STD 213;
- c) Exhibit A (Scope of Services);
- d) Exhibit D (Special Terms and Conditions);
- e) Exhibit B (Budget Detail and Payment Provisions);
- f) Exhibit E (Additional Provisions);
- g) With respect to defined terms, the definitions in Section 6 of Exhibit D supercede any definition in any other exhibit purporting to define the same term, and the other definitions in the Glossary supercede any definition in Exhibit C purporting to define the same term;
- h) With respect to sections of the RFP and the Final Proposal that are incorporated by reference in Exhibit A and in the other Exhibits to this Contract, the RFP takes precedence over any inconsistent provisions in the Final Proposal and any ambiguity between a description in the RFP and in the Final Proposal will be resolved in favor of the description included in the RFP.

12. PACKING AND SHIPMENT:

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) show the number of the container and the total number of containers in the shipment; and
 - ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying the State's Contract

number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.

- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES: No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a) Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

- 14. DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

- 15. SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

- 16. INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:

- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.

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- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
 - d) All Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
 - e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within sixty (60) days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
- 17. SAMPLES:**
- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
 - b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.
- 18. WARRANTY:**
- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon acceptance of the Deliverable or service in question and end one (1) year thereafter. Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
 - b) Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction.
 - c) Unless otherwise specified in the Statement of Work
 - (i) Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - (ii) Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.
 - (iii) Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.
 - d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
 - e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:
 - (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service, or
 - (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
 - f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 19. SAFETY AND ACCIDENT PREVENTION:** In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.
- 20. INSURANCE:** When performing work on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the Contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the Buyer, the Contractor may be required to have the State shown as an "additional insured" on selected policies.
- 21. TERMINATION FOR NON-APPROPRIATION OF FUNDS**
- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this

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Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.

- b) STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

22. TERMINATION FOR THE CONVENIENCE OF THE STATE-

- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
- Stop work as specified in the Notice of Termination.
 - Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
 - Terminate all subContracts to the extent they relate to the work terminated.
 - Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.
- c) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts, provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
- The Contract price for Deliverables or services accepted by the State and not previously paid for, adjusted for any savings on freight and other charges; and
 - The total of:
 - The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
 - The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
 - Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- d) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

23. TERMINATION FOR DEFAULT:

- a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to

the Contractor, terminate this Contract in whole or in part if the Contractor fails to:

- Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
 - Make progress, so that the lack of progress endangers performance of this Contract; or
 - Perform any of the other provisions of this Contract.
- b) The State's right to terminate this Contract under sub-section a) above, may be exercised if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period.
- c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
- completed Deliverables;
 - partially completed Deliverables; and,
 - subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay Contract price for completed Deliverables delivered and accepted. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property, provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined by a final ruling in accordance with the Disputes Clause that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

24. FORCE MAJEURE

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- Acts of God or of the public enemy, and
- Acts of the federal or State government in either its sovereign or contractual capacity.

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If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted Deliverables or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

- a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
- b) In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor.
- c) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

26. LIMITATION OF LIABILITY:

- a) Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply (i) to liability under the General Provisions; entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims covered by any specific provision herein calling for liquidated damages; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.
- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.

27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

28. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

29. INVOICES:

Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

30. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

31. TAXES: Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.

32. NEWLY MANUFACTURED GOODS: All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.

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- 33. CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
- 34. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.
- 35. NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Department of General Services.
- 36. DOCUMENTATION**
- a) The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
 - b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.
- 37. RIGHTS IN WORK PRODUCT:**
- a) All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
 - b) Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.
 - c) The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
 - d) The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
 - e) This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.
- 38. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA**
- a) State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
 - b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
 - c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.
- 39. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:**
- a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software

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manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 39a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 39a) will be conditional upon the following:

- i) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- ii) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables or Software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
- d) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - (i) The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or,
 - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
 - (iii) The modification by the State of the Equipment furnished hereunder or of the Software; or
 - (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.

- e) Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

40. EXAMINATION AND AUDIT: Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.

41. DISPUTES:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for Information Technology, Goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.
- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

42. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor

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- shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- (i) Cancel the Stop Work Order; or
 - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
- (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - (ii) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
- 43. FOLLOW-ON CONTRACTS:**
- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
 - (i) will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
 - (ii) will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
 - b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
 - (i) development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - (ii) development or design of test requirements;
 - (iii) evaluation of test data;
 - (iv) direction of or evaluation of another Contractor;
 - (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or
 - (vi) provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
- (i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - (ii) where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.
- 44. PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
- 45. COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 46. NONDISCRIMINATION CLAUSE:**
- a) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
- 47. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one

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final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

48. ASSIGNMENT OF ANTITRUST ACTIONS: Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - (i) the assignee has not been injured thereby, or
 - (ii) the assignee declines to file a court action for the cause of action.

49. DRUG-FREE WORKPLACE CERTIFICATION: The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;
 - (iii) any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
 - (i) will receive a copy of the company's drug-free policy statement; and,
 - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

50. FOUR-DIGIT DATE COMPLIANCE: Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process,

calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

51. SWEATSHOP LABOR: In accordance with PCC Section 6108, Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials or supplies furnished to the State pursuant to this contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor.

Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with the requirements of this paragraph.

52. RECYCLING: Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, Goods, supplies offered, or products used in the performance of this Contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.

53. CHILD SUPPORT COMPLIANCE ACT: For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:

- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

54. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

55. UNION ACTIVITIES: For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that by signing this agreement, Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

- a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- b) No state funds received under this agreement will be used to assist, promote or deter union organizing.
- c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor

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shall provide those records to the Attorney General upon request.

- 56. ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

Exhibit D**SPECIAL TERMS AND CONDITIONS****1. Agency Liability.**

The Service Provider warrants by execution of this Service Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Service Provider for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

2. Potential Subcontractors.

Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Service Provider of its responsibilities and obligations hereunder. The Service Provider agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly engaged by the Service Provider. The Service Provider's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Service Provider. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor. The Service Provider shall be the sole point of contact between any subcontractor and the State.

3. Access to Data.

The Service Provider shall make readily accessible to the State, program, financial, statistical, and other data including, but not limited to: audits, reports, memoranda, agreements the Service Provider has made with other subcontractors, and other written communications concerning the operations related to the performance of this Service Agreement.

4. Bond Requirements.

The Service Provider shall provide a performance bond in the amount of \$15,000,000.00. The performance bond shall be allowed to terminate or expire after the completion of all the Production Validation Audit for Version 1 and upon the affirmative declaration of the State that the need for the performance bond has ceased. The Service Provider shall also provide a fidelity bond covering acts of employee dishonesty in the amount as set for in SOW OM 2.6 and within limits as described in this Paragraph 8 in Exhibit D "Special Terms and Conditions" of this Service Agreement. This bond requirement shall be reviewed annually by the State to ensure that the State is adequately protected. Failure to provide an adequate performance or fidelity bond shall be deemed a material breach of this Agreement.

5. Liquidated Damages.

The remedies set forth in this Section 5 are in addition to, and are cumulative to, the remedies set forth in Section 26 of Exhibit C.

- (a) The parties agree that in the event the Service Provider fails to be ready for implementation (the "SDU Version 1 Operational Readiness Assessment and Review"), as demonstrated by State acceptance of the CSE Version 1 Operational Readiness Assessment Review as set forth in the approved CSE Project Schedule and rejection of the SDU Version 1 Operational Readiness Assessment and Review (SOW IM 3.31), the State will incur considerable damage, including but not limited to lost resources, additional expenditure of resources for the re-start of the procurement and development process, and substantial federal penalties for failure to install a uniform, statewide automation child support system. It would be impractical and extremely difficult to fix the actual damages sustained in the event of any such failure. The parties agree that the Service Provider shall pay amounts agreed to in this Section as liquidated damages and not as a penalty. Any payment made by the Service Provider pursuant to this Section represents the parties' reasonable estimate of the State's actual damages attributable to such delay under the circumstances described in this Section. Once the Service Provider has been deemed by the State as ready by the acceptance of the initial Operational Readiness Assessment and Review for Version 1, Implementation 1, liquidated damages described in this paragraph shall not be applied to any subsequent State determination of Service Provider readiness, if any, of the initial release of Version 1, Implementation 1 (added per CR-3-00025-01).
- (b) In the event that the Service Provider fails to be ready for implementation by the initial SDU Operational Readiness Assessment and Review, the Service Provider shall be liable to the State for liquidated damages in the amount of \$20,000 per State business day until the earlier of (i) the date on which the State accepts the initial SDU Operational Readiness Assessment Review (SOW IM 3.31) or (ii) this Contract is terminated by the State for default by the Service Provider, in accordance with the provisions of Section 23 of Exhibit C (Form GSPD-401IT General Provisions - Information Technology).
- (c) The Service Provider shall pay liquidated damages due under this Section promptly upon demand therefore from the State. In addition, the State shall be entitled to an offset for amounts due the State as liquidated damages, which may be deducted by the State from any money payable to the Service Provider either currently or in the future as a result of this Agreement.
- (d) The parties agree to an extension of one (1) day for each day of delay that occurs due to causes beyond the control of the Service Provider, including delay cause by the State's failure to meet its obligations under this Agreement in a timely fashion or by the State or any LCSA's failure to provide the Service Provider access to resources necessary for the Service Provider to timely complete its performance.

6. Acceptance of Contract Deliverables.

Notwithstanding Section 16 of Exhibit C, the following terms and conditions shall apply and, for purposes of this Section 6 of Exhibit D, shall supercede any inconsistent terms set forth in Section 16 of Exhibit C.

- (a) SDU Contract Deliverables List. The Deliverables for this Service Agreement are set forth on the Contract Deliverables List (CDL) in the SDU RFP, Exhibit 6A and incorporated herein by reference. Hereafter each individual deliverable on the CDL shall be referred to as a "Contract Deliverables List Item" or "CDL Item."
- (b) The State's Acceptance Options. The State's determination of whether or not a CDL Item has satisfied the Acceptance Criteria can be expressed as one of three options:
 - (i) Unconditional Acceptance. Unconditional Acceptance of a CDL Item indicates that the State is satisfied that the CDL Item satisfactorily meets its Acceptance Criteria and does not require any significant corrective actions by the Service Provider. In such cases, the Service Provider will be notified that the CDL Item has been "Accepted" by the delivery of a written notice (the "Acceptance Notice").
 - (ii) Conditional Acceptance. Conditional Acceptance of a CDL Item indicates that the State is satisfied that the CDL Item satisfactorily meets most of the Acceptance Criteria and the CDL Item has no material deviations from the Acceptance Criteria. If the State conditionally accepts the CDL Item, it will immediately identify in writing those areas where the CDL Item does not meet the Acceptance Criteria and will inform the Service Provider of such in writing in a Request for Conditional Acceptance Corrective Action Plan. If the Service Provider agrees to correct the non-compliance and provides a written Conditional Acceptance Corrective Action Plan that is agreed to by the State, the State may conditionally accept the CDL Item. In such cases, the Service Provider will be notified that the CDL Item has been "Accepted with Conditions" by the delivery of a written Acceptance Notice.
 - (iii) Rejection. Rejection of a CDL Item indicates that the State is not satisfied that the CDL Item satisfactorily meets the Acceptance Criteria for that CDL Item. The State will identify those areas where the CDL Item does not meet the Acceptance Criteria and will inform the Service Provider that corrections must be made to resolve the non-compliance and that the CDL Item is to be re-submitted to the process more particularly described in this Section 6. In such cases, the Service Provider will be notified in writing that the CDL Item has been "Rejected".
- (c) General Acceptance Provisions. In the absence of specific notice, cure or remedy provisions as set forth in this Service Agreement, these general Acceptance provisions shall apply.

- (i) Notice. Upon completion of the acceptance process, the State will have five (5) State business days in which to notify the Service Provider of the acceptance process results.
- (ii) Cure Period. If the CDL Item does not comply with its Acceptance Criteria, the Service Provider shall be allowed a reasonable time to cure the identified deficiency, defect or non-compliance (hereafter "deficiency") with the Acceptance Criteria. The State will describe the deficiency with the Acceptance Criteria in sufficient detail to notify the Service Provider. The State shall allow the Service Provider to take corrective action as set forth and in the timeframe in a State-approved Corrective Action Plan prepared by the Service Provider. Accordingly, the Service Provider will promptly correct and re-issue the CDL Item. The correction will be limited to conforming the identified deficiency, defect or noncompliance with the Acceptance Criteria and confirming that no new deficiency, defect or non-compliance with the Acceptance Criteria has been introduced. If any previously identified and reported deficiency, defect or non-compliance with the Acceptance Criteria remains, the State may exercise any of its options set forth below in "Remedies for Failure to Cure."
- (iii) Remedies for Failure to Cure. If the Service Provider is unable to correct any deficiency, defect or noncompliance with the Acceptance Criteria that prevents the State from accepting the CDL Item in the time set forth in the Corrective Action Plan(s), the State may exercise any of the following three options: (1) extend the acceptance process by amending the Corrective Action Plan; or (2) conditionally accept the CDL Item and related services, if any, and equitably reduce the Service Provider's compensation; or (3) exercise its rights and remedies under this Service Agreement.
- (d) Acceptance Criteria. Unless superceded by an accepted CDL Item, the Acceptance Criteria for CDL Items shall be (1) defined in CDL as to form and content, (2) any additional applicable industry standards as agreed upon by the parties, and (3) the following criteria:
 - (i) the content assumes timely delivery of SDU services consistent with the Implementation Schedule "CDL IM 002";
 - (ii) is consistent with the staffing or other commitments of State resources required of the State as a State responsibility and any applicable SOW;
 - (iii) is consistent with the staffing or other commitments of the LCSAs, the location or manner of performance of services described in a CDL Item is reasonably acceptable to the State;
 - (iv) is consistent with the CDL Item Description for such CDL Item; and

- (v) sets forth business procedures or processes at the State which are consistent with then-current business procedures or processes or with business procedures or processes that the State is willing to adopt;

In addition, the State CDL Item Acceptance Review will consist of an examination and review of the CDL Item to determine if it:

- (i) supports traceability to the applicable sections of the RFP (as superceded only as provided in Section 1(b)(ix) of Exhibit A of this Service Agreement) and to the applicable specifications;
 - (ii) the content of the CDL Item is internally consistent;
 - (iii) meets the Acceptance Criteria described above;
 - (iv) is externally consistent with the content of related CDL Items;
 - (v) is externally consistent with other project factors, including without limitation project tools, known issues, risks, and resource plans;
 - (vi) clearly communicates its contents, including a natural and logical flow and consistency within the context of the overall deliverable.
 - (vii) provides sufficient detail to describe how defined work will be accomplished.
 - (viii) Supports accurate and timely processing of child support payments and associated audits.
- (e) Accepted CDL Items. The accepted CDL Item will constitute Acceptance Criteria with respect to the subject matter described therein but only to the extent that, the content of the accepted CDL Item is the content required in the applicable CDL Item Description.
- (f) Specified Standards. Where a CDL Item Description relies upon or requires compliance with one or more Standard(s), the terms “needs”, “requirements”, “constraints” and similar terms used in such Standard shall be interpreted to mean the needs, requirements, and constraints as are more particularly described in the Scope of Services herein, and in particular as described in the applicable sections of the RFP (which RFP description shall be superceded only as provided in Section 1(b)(ix) of Exhibit A of this Service Agreement) and to the applicable specifications. The State may waive any one or more provisions of an applicable Standard if the State determines, in its discretion, that such provision is not required or not applicable to the CDL Item in question.
- (g) Timing of the Acceptance Process. The Acceptance Process begins on the next full State business day from when a CDL Item is properly submitted to the State for Acceptance. The duration of the acceptance process is specified for a CDL

Item within the CDL Item description. If no time frame is specified the Acceptance Process duration will be thirty (30) calendar days. The duration of the Acceptance Process may be amended as mutually agreed to by the parties in writing.

7. Service Provider's Key Personnel.

- (a) The Service Provider's shall provide a resume for each member of the Service Provider's staff who will exercise a significant administrative, policy, or consulting role on the SDU Project. These personnel shall be referred to both collectively and individually as "Key Personnel."
- (b) The Service Provider will designate a Project Manager who will be authorized to act for the Service Provider in direction of daily SDU services and operation. Any substitution or replacement for the Service Provider's SDU Project Manager throughout the period of performance shall be subject to the approval of the State.
- (c) The State reserves the right to approve all assignments of Service Provider's Key Personnel including but not limited to the reassignment or transfer of such Key Personnel prior to the completion of such Key Personnel's role on SDU Project.
- (d) The State reserves the right to investigate the personal history of all Contractor personnel who may have access to Franchise Tax Board, Internal Revenue Service, Department of Child Support Services or State and federal child support case information. The State may require such personnel to complete a personal history questionnaire and be fingerprinted. Fingerprints will be sent to the California Department of Justice for information regarding prior criminal history. If the Service Provider currently performs a personal history investigation on its personnel, the State may at its discretion accept that information in lieu of the personnel being required to complete the State's personal history questionnaire and being fingerprinted.

8. Insurance Requirements.

In addition to the insurance provisions of Paragraph 20 of the General Provisions as set forth in Exhibit C of this Service Agreement, the Service Provider shall be required to furnish proof of insurance, showing the State and the Child Support Payment Trust Fund as named beneficiaries, to the State against any loss, damage, costs, expenses, claims and liability incurred by the State and/or the Child Support Payment Trust Fund as a result of the Service Provider's acts or omissions in an amount no less than the following:

- General Commercial Liability Insurance with limits not less than \$1 million for personal injury claims and other lawsuits, resulting from on-site accidents, defective products, substandard work, and other issues.

- Umbrella Liability (in excess of general commercial liability) not less than \$5 million
- ☐ Fidelity bond(s) not less than \$5 million to cover the fraudulent and dishonest acts of employees.
- ☐ Errors and Omissions Insurance with limits not less than \$10 million to be in force and effect at all times which shall indemnify the State for loss which may be incurred due to human error, computer error, machine error, or problems with non-common carrier telecommunication lines owned or leased by the contractor, or equipment problems, whether caused by negligence, error, omission, or mistake by the contractor, subcontractor, any employee, officer, or agents thereof.
- ☐ Premises Operation and Property damage Insurance: A minimum of \$10 million per occurrence that indemnifies the State against loss of money arising in transit or on the premises, at sites of contracts or as specified in the schedule or endorsed in the policy. Such insurance shall cover loss of all instruments and cash including foreign currency. Transit cover shall apply to transit to and from the bank, to and from the State's premises or from one insured's premises to another. Cover for money in business premises shall relate to money in premises during business hours, money in premises outside business hours, money at the insured's sites of contracts during business hours and money in locked safe or strong room on the premises outside business hours. This policy can also be extended to cover money in the custody of directors or senior managers.

The insurance requirement shall be reviewed annually by the State to ensure that the State and/or the Child Support Payment Trust Fund is adequately protected. Failure to provide adequate insurance shall be deemed a material breach of this Service Agreement.

9. Time is of the Essence.

Time is of the essence in the Service Provider's performance under this Service Agreement.

10. Interruptions in Services.

The parties agree that interruptions in SDU services required by this Service Agreement that are not attributable to the SDU or any component thereof will not result in a negative score in the "performance" category on the Service Provider's Balanced Score Card or Service Level Objectives. The Service Provider agrees that it will not hold the State liable for any costs or losses incurred due to interruption or failure of SDU services attributable to the Wide Area Network (also known as the "WAN") and/or the CSE System and any non-SDU component thereof.

Exhibit E**ADDITIONAL PROVISIONS****1. Federal Contract Requirements.**

- (a) Equal Employment Opportunity. The Service Provider must comply with E.O. 11246 "Equal Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" to the extent required by applicable federal law.
- (b) Copeland "Anti-Kickback" Act. The Service Provider must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) to the extent required by applicable federal law.
- (c) Davis-Bacon Act. The Service Provider must comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7) to the extent required by applicable federal law.
- (d) Contract Work Hours and Safety Standards Act. The Service Provider must comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) to the extent required by applicable federal law.
- (e) Clean Air Act and Federal Water Pollution Control Act. The Service Provider must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. et seq. to the extent required by applicable federal law.
- (f) Energy Policy and Conservation Act. The Service Provider must comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L.94-163, 89 Stat.871) to the extent required by applicable federal law.

2. Consultant - Staff Expenses.

The Service Provider represents that it has or shall secure at its own expense, all staff required to perform the services described in this Agreement. Such personnel shall not be employees of or have any contractual relationship with any governmental entity.

3. Public Works - Rules/Regulations.

Service Provider shall observe and comply with all federal, State, city, and county laws, rules or regulations affecting the work. Any work done that does not comply with any laws, rules, or regulations will be remedied at the Service Provider's expense.